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Attorneys for Defendant
CRST VAN EXPEDITED, INC. f/k/a CRST, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

JAMES COLE, on behalf of
himself and all others similarly
situated,

Plaintiffs,

vs.

CRST, INC, an Iowa
Corporation, and DOES 1
through 50, inclusive,

Defendants.

CASE NO. EDCV 08-1570-VAP
(OPx)

**[PROPOSED] PROTECTIVE
ORDER**

1 Based on the stipulation of the parties and in recognition of
2 the provisions of Rule 26(c) of the Federal Rules of Civil Procedure
3 which provides for the issuance of protective orders limiting the
4 disclosure of discovered information in appropriate circumstances,
5 and where good cause having been shown:

6 **IT IS HEREBY ORDERED THAT:**

7 1. This Protective Order ("Protective Order") governs the
8 treatment of all documents, depositions, deposition exhibits,
9 interrogatory responses, responses to requests for admission and
10 any other discovery authorized by the Federal Rules of Civil
11 Procedure, as well as any other disclosed information (collectively
12 "Discovery Material") produced by any party or non-party
13 ("Producing Party") in the above-captioned matter ("Action").

14 2. Each Producing Party that designates information or
15 items for protection under this Protective Order must take care to
16 limit any such designation to specific material that qualifies as
17 "Confidential." A Producing Party must take care to designate for
18 protection only those parts of material, documents, items, or oral or
19 written communications that qualify - so that other portions of the
20 material, documents, items, or communications for which
21 protection is not warranted are not swept unjustifiably within the
22 ambit of this Protective Order.

23 3. If it comes to a Producing Party's attention that
24 information or items that it designated for protection do not qualify
25 for protection, that Producing Party must promptly notify all other
26 parties that it is withdrawing the mistaken designation.

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1 4. Any Producing Party may designate as confidential any
2 Discovery Material that it believes in good faith contains legally
3 protectable information in accordance with Rule 26(c) of the Federal
4 Rules of Civil Procedure. All Discovery Material so designated shall
5 be referred to in this Protective Order as "Confidential Discovery
6 Material" and shall be handled in strict accordance with the terms
7 of this Protective Order.

8 5. Any non-party may designate any document it produces,
9 any deposition testimony it provides, or any other discovery it
10 produces or provides to any party in this action as Confidential
11 Discovery Material under the terms of this Protective Order. The
12 parties shall be bound by this Order's substance and procedures
13 with respect to such discovery, but nothing shall prevent the parties
14 in this action from seeking appropriate relief in either this Court, or
15 in a court with proper jurisdiction over the discovery. Any
16 designation by a non-party shall only be applicable to the actual
17 document or discovery produced by the non-party and shall not be
18 applicable to any identical or similar discovery produced or
19 provided by another non-party, or any party to this Action.

20 6. Designation of documents or information as Confidential
21 Discovery Material shall not be effective as to information obtained
22 from the public domain or from sources (other than the Producing
23 Party) that were rightfully in possession of the information,
24 regardless of whether such information is also contained in
25 materials designated as Confidential Discovery Material pursuant to
26 this Protective Order.

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1 7. Designation of documents or information as Confidential
2 Discovery Material shall not be effective as to information made
3 publicly available by a party prior to the initiation of this Action.

4 8. All Confidential Discovery Material in the form of physical
5 objects or documents shall be designated by stamping or affixing, in
6 an unobtrusive manner, the legend "CONFIDENTIAL – SUBJECT
7 TO COURT ORDER" on the face of the document and on each page
8 or portion thereof so designated. Any such designation shall subject
9 the document, its contents, or any portion thereof, to this Protective
10 Order without any further act on the part of the Producing Party.

11 9. Confidential Discovery Material may only be used in
12 connection with this litigation and for no other purpose. With the
13 exception of the following persons, Confidential Discovery Material
14 may not be disclosed or made available to any person or entity,
15 without written consent from the Producing Party:

- 16 a. The parties to this Action;
- 17 b. Counsel representing the respective parties
18 (including in-house counsel for any party) to this
19 Action, including attorneys, paraprofessionals, and
20 employees of such firms;
- 21 c. Experts, investigators or consultants, including any
22 professional jury or trial consultant (hereinafter
23 referred to collectively as "experts") retained by
24 counsel for the parties to assist in the preparation
25 and trial of this Action, provided that any such
26 expert execute an undertaking to be bound by this
27 Protective Order in the form attached hereto as
28 Appendix A (the "Undertaking") prior to disclosure,
 and a copy of such signed Undertaking is retained
 by counsel for the party making such disclosures so
 that it may be shown to counsel for the Producing
 Party if a request therefore is made;

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- 1 d. Employees, officers and directors of each party or its
2 affiliate(s) to the extent that such person(s) are
3 required in good faith to provide assistance in the
4 prosecution or defense of this Action, provided that
5 such non-counsel person(s) execute the
6 Undertaking prior to disclosure, and a copy of such
7 signed Undertaking is retained by counsel for the
8 party making such disclosures so that it may be
9 shown to counsel for the Producing party if a
10 request therefore is made;
- 11 e. Potential non-party witnesses in this Action and
12 their counsel, if separate from counsel to the
13 parties, when such disclosure is reasonably
14 necessary for the purposes of trial preparation,
15 factual investigation, or discovery, provided that any
16 such persons and any such counsel execute the
17 Undertaking prior to disclosure, and a copy of such
18 signed Undertaking is retained by counsel for the
19 party making disclosure so that it may be shown to
20 counsel for the Producing Party if a request
21 therefore is made;
- 22 f. Any witness deposed in this Action, but only for the
23 purpose of assisting in the preparation or
24 examination of the witness, provided that the
25 witness either (1) executes the Undertaking prior to
26 disclosure, and a copy of such signed Undertaking
27 is retained by counsel for the party making
28 disclosure so that it may be shown to counsel for
the Producing Party if a request therefore is made,
or (2) agree orally on the record at deposition to be
bound by this Protective Order.
- g. Stenographers or court reporters who record
testimony taken at any time or place in the course
of this Action or persons operating video recording
equipment of and at such testimony;
- h. Employees of third-party contractors involved in one
or more aspects of copying, organizing, filing,
coding, imaging, converting, storing, or retrieving
data or designing programs for handling data
connected with this Action, including the
performance of such duties in relation to a
computerized litigation support system or in
providing other clerical and support services; and
- i. The Court, Court personnel, and any other person
designated by the Court in this Action in the
interest of justice, upon such terms as the Court
may deem proper.

1 10. All copies, duplicates, summaries or descriptions
2 (hereinafter referred to collectively as "copies") of Confidential
3 Discovery Material, or any portion thereof, shall be immediately
4 affixed with the words "CONFIDENTIAL - SUBJECT TO COURT
5 ORDER" if those words do not already appear.

6 11. A Producing Party may, on the record of a deposition, or
7 within ten business days after receipt of the transcript(s) of such
8 deposition, designate in good faith any portion or portions of such
9 transcript(s), including exhibits and videotape, as Confidential
10 Discovery Material under the terms of this Protective Order. Until
11 the above-referenced ten-day period expires, the complete
12 deposition transcript and videotape shall be treated as Confidential
13 Discovery Material unless otherwise specified in writing or on the
14 record of the deposition by the Producing Party. Any testimony
15 which describes a document or other discovery material that has
16 been designated as "Confidential - Subject to Court Order," as
17 described above, also shall be deemed designated as such. All
18 copies of deposition transcripts that contain information or material
19 designated as Confidential Discovery Material shall be prominently
20 marked "Confidential - Subject to Court Order" on the cover thereof
21 and on each page that contains Confidential Discovery Material
22 and, if filed with the Court, the portions of such transcripts so
23 designated shall be filed in accordance with the provisions of
24 Paragraph 16.

25 12. Confidential Discovery Material shall be used only for the
26 prosecution or defense of this Action (including appeals and
27 settlement negotiations), and may be disclosed only under the
28 circumstances and to the persons specifically provided for in this or

1 subsequent court orders in this Action, or with the prior written
2 consent of the Producing Party with respect to specifically identified
3 Confidential Discovery Material. Should a party in possession of
4 Confidential Discovery Material receive a subpoena, document
5 request, or court order from a nonparty seeking production or other
6 disclosure of Confidential Discovery Material, he or she shall give
7 written notice within seven days of receipt thereof, or, if the return
8 date is shorter than 14 days, the same date as receipt, to counsel
9 for the party who designated the material as "Confidential – Subject
10 to Court Order." The notice shall enclose a copy of the subpoena,
11 document request or court order. Unless a court order directs
12 otherwise, the party in possession of Confidential Discovery
13 Material shall not produce or disclose such material without first
14 providing notice on the terms above to the following individuals by
15 hand or overnight express courier, and with respect to a subpoena
16 or document request shall not produce any such material in the
17 absence of an order requiring such production, entered after the
18 Producing Party has been notified of the request for production and
19 has been given reasonable opportunity to intervene and object to
20 such production:

- 21 a. Attorney for Defendants:
22 James H. Hanson
23 Scopelitis, Garvin, Light, Hanson & Feary, P.C.
24 10 West Market Street, Suite 1500
25 Indianapolis, IN 46204
26 Telephone: (317) 637-1777
27 Facsimile: (317) 687-2414
- 28 b. Attorney for Plaintiffs:
James R. Hawkins
James R. Hawkins, APLC
7700 Irvine Center Drive, Suite 800
Irvine, CA 92618
Telephone: (949) 788-2949
Facsimile: (949) 788-2950

1 13. The inadvertent failure to stamp Discovery Material, or a
2 portion thereof, with the "Confidential – Subject to Court Order"
3 designation in no way alters or waives the protected and
4 confidential nature of the Discovery Material otherwise deserving of
5 such a designation and does not remove it from the scope of this
6 Protective Order provided that the Producing Party notifies the
7 receiving party, in writing, no later than 10 business days after
8 production of information and materials that the Confidential
9 Discovery Material was not properly designated. Such written
10 notice shall identify with specificity the Discovery Material the
11 Producing Party is then designating to be "Confidential – Subject to
12 Court Order" and shall promptly provide a replacement copy of
13 such Confidential Discovery Material with the appropriate
14 "Confidential – Subject to Court Order" designation thereupon.
15 Once the replacement copy is provided, the receiving party shall
16 return the original copy that was produced without the appropriate
17 "Confidential – Subject to Court Order" designation to the
18 Producing Party or discard it in a manner reasonably calculated to
19 prevent disclosure of the Confidential Information. Treatment of
20 Confidential Discovery Material, which was inadvertently produced
21 without the appropriate "Confidential – Subject to Court Order"
22 designation, in a manner inconsistent with this Protective Order
23 prior to notice of such inadvertent production is not a breach of this
24 Protective Order.

25 14. The following procedures shall apply to any disputes
26 arising from the designation of Discovery Materials as Confidential
27 pursuant to this Protective Order:
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- a. If a party in good faith disagrees with the Producing Party's confidential designation, that party shall inform counsel for the Producing Party in writing of that disagreement no later than 14 days prior to the filing of the final pretrial order;
- b. Upon written notification that a party disagrees with a confidential designation, counsel for the objecting party and the Producing Party will confer in a good faith effort to resolve the dispute without the Court's intervention;
- c. If the dispute is not resolved within 14 days of the Producing Party's receipt of the objecting party's written notification, the objecting party may invoke the Court's rules and procedures, including ex parte motions for raising discovery disputes. The Producing Party shall bear the burden of proving that information has properly been designated as Confidential Discovery Material.
- d. Until such time as any such judicial process has been initiated and resolved, all parties receiving Confidential Discovery Material shall abide by the designation.

15. If information is produced in discovery that is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. The Producing Party must notify the receiving party within ten business days after learning or discovering that such inadvertent production has been made. After being notified, the receiving party must promptly return or destroy the specified information and any copies it has, and may not use or disclose the information until the claim is resolved. The receiving party may promptly present the information to the Court under seal for determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The Producing Party must preserve the information until the claim is resolved.

1 16. Any party seeking to file Confidential Discovery Material
2 with the Court must move the Court for leave to file the material
3 under seal for good cause, or allow the Producing Party to seek
4 such approval, either before filing any Confidential Discovery
5 Material under seal, or contemporaneously therewith. The
6 Producing Party shall maintain the original documents intact for
7 any further review. A redacted copy of the pleading shall be filed
8 with the Clerk of Court for the record. If the Court denies leave to
9 file the material under seal, the material may be filed (or re-filed)
10 with the Court. A Producing Party's decision to file its Confidential
11 Discovery Material with the Court not under seal will cause material
12 to lose its "Confidential – Subject to Court Order" designation under
13 the terms of this Protective Order. Nothing in this Protective Order
14 shall prevent any party or non-party (including interested members
15 of the public) from petitioning the Court for reconsideration of a
16 determination allowing Confidential Discovery Material to be filed
17 under seal.

18 17. Confidential Discovery Material may be offered into
19 evidence at trial or at any hearing in open court, provided that the
20 offering party applies for an order that the evidence be received in
21 camera or under other less public circumstances to prevent
22 unnecessary disclosure. Any request for confidentiality, closure or
23 sealing of any hearing or trial must be made to the judge then
24 presiding. If the offering party does not intend to apply for such an
25 order, it must provide the Producing Party with reasonable advance
26 notice of its intention to offer the Confidential Discovery Material
27 into evidence at trial or in open court.
28

1 18. Nothing in this Protective Order shall be interpreted to
2 prohibit or prevent the Producing Party from using or discussing its
3 own Confidential Discovery Material in any way it sees fit to so use
4 or discuss that material for any reason. Any such use or discussion
5 of Confidential Discovery Material shall not be deemed a waiver of
6 the terms of this Protective Order, with the exception of a release of
7 the Confidential Discovery Material into the public domain.

8 19. Nothing in this Protective Order shall be construed to
9 affect the admissibility of any document, material or information at
10 any trial or hearing. Nor shall anything in this Protective Order be
11 interpreted to require disclosure of materials which a party
12 contends are protected from disclosure by the attorney-client
13 privilege, the attorney work product doctrine or other applicable
14 privilege preventing disclosure of certain information.

15 20. Each document, material, or other thing, or portion
16 thereof designated "Confidential - Subject to Court Order" shall
17 retain that designation and shall remain subject to the terms of this
18 Protective Order until such time as the parties agree to the contrary
19 or the Court renders a decision that a particular document,
20 material, or other thing, or portion thereof is not subject to this
21 Protective Order, and any and all proceedings or interlocutory
22 appeals challenging such decision have been concluded.

23 21. Except as otherwise agreed in writing by the parties,
24 within 90 days after the entry of a final judgment (including
25 resolution of appeals or petitions for review), all Confidential
26 Discovery Material supplied by a Producing Party and all paper
27 copies and reasonably available electronic copies thereof (including,
28 without limitation, copies provided to testifying or consulting

1 experts) shall, at Producing Party's written request, be returned to
2 the Producing Party. Within 60 days after entry of a final judgment,
3 the Producing Party may in writing request the receiving party to
4 certify to the Producing Party that all such materials in their
5 possession, custody or control have been destroyed in a manner
6 reasonably calculated to prevent disclosure of the Confidential
7 Discovery Material. The Clerk of Court may return to counsel for
8 the parties, or destroy, any sealed material at the end of the
9 litigation, including any appeals. This Protective Order shall survive
10 the final termination of this Action with respect to any such
11 Confidential Discovery Material, except as provided in Paragraph
12 20.

13 22. Within 60 days after this Action is closed in the District
14 Court by a final judgment and all appeal rights have expired, any
15 Producing Party may obtain the return of any previously-sealed or
16 previously-restricted Discovery Material filed with the Clerk of Court
17 by moving the Court for the return of such Discovery Material. Any
18 Discovery Material that is not so withdrawn will become part of the
19 permanent public case file.

20 23. Nothing in this Protective Order shall preclude a party
21 from seeking modification of this Protective Order to provide greater
22 protection than afforded under this Protective Order. However, no
23 information may be withheld from discovery on the ground that the
24 material to be disclosed requires protection greater than that
25 afforded by this Protective Order, unless the party claiming a need
26 for greater protection moves for an order providing such special
27 protection pursuant to Federal Rule of Civil Procedure 26(c).
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1 24. Any party may apply to this Court, upon written notice,
2 in accordance with the rules of this Court, for an Order amending,
3 modifying or vacating all provisions of this Protective Order.
4 Nothing in this Protective Order shall be construed as prejudicing
5 any Producing Party's right to seek an agreement or court order
6 providing additional confidentiality or other protections to any
7 Confidential Discovery Material produced in this Action. Until such
8 agreement or order is obtained, however, this Protective Order shall
9 constitute the entire agreement of the parties with respect to the
10 matters covered herein.

11 April 24, 2009



OSWALD PARADA
U.S. MAGISTRATE JUDGE

APPENDIX A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

JAMES COLE, on behalf of
himself and all others similarly
situated,

Plaintiffs,

vs.

CRST, INC, an Iowa
Corporation, and DOES 1
through 50, inclusive,

Defendants.

CASE NO. EDCV 08-1570-VAP
(OPx)

UNDERTAKING

My full name is _____. I am presently
employed by _____ in the position of
_____. My residence address is _____
_____.

I hereby acknowledge that I am to have access to information
designated in this litigation as "CONFIDENTIAL – Subject To Court
Order" for the purpose of _____, if
permitted by the terms of the parties' Stipulation and Protective
Order ("Protective Order") in the above-captioned litigation. I certify
my understanding that such information has been provided to me
pursuant to the terms and restrictions of this Protective Order
entered _____, 2009, in the above-captioned litigation, and that
I have been given a copy of and have read this Protective Order and
agree to be bound by the terms thereof. I further agree to subject
myself to the jurisdiction of the United States District Court for the

1 Central District of California, regarding resolution of any matter
2 pertaining to this Protective Order.

3 Dated: _____ Signature: _____
4 Printed Name: _____
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